Prepared 26 June 2002

SOUTH AFRICAN 2002 INVESTMENT CLIMATE STATEMENT

A.1. Openness to Foreign Investment

1. South Africa (SA) has during the past year continued to focus on creating a good investment climate for both domestic and foreign investors. Its macroeconomic management is sound while investment policies that promote openness and raise productivity and growth, are key objectives of the SA Government (SAG).

2. As part of its ongoing efforts to market and promote South Africa as an investment destination, the SAG's investment agency (Trade and Investment South Africa – TISA) has established various project support and aftercare divisions, to assist investors with the necessary support information to facilitate the investment decision and expansion process. The SAG has identified vehicles and vehicle components, chemicals, electronics, information technology, pharmaceuticals, telecommunications, textiles, clothing, and tourism as priority areas for attracting US investment into SA.

3. South Africa offers an attractive climate for foreign investors. As a result, a large number of American firms have invested or reinvested in SA since the lifting of apartheid sanctions in the early 1990s, making the US one of the largest sources of new investment in SA. South Africa has a substantially developed market with significant growth potential and access to other markets in Africa, well-developed financial institutions and capital markets, excellent communication and transport links, liberal repatriation of profits and other earnings, lower labor costs compared to industrialized countries, inexpensive electrical power and raw materials, and strong macroeconomic policies. The SAG has also made progress in establishing measures for good governance, such as regulation of industry, promotion of competition and prevention of corruption.

4. SA, however, faces daunting challenges as it competes with other emerging market countries for foreign

investment. These challenges include high unemployment, crime, poor education systems, housing shortages, and health care challenges, the most significant of which is HIV/AIDS. As a result of shortcomings in the educational system and the departure of skilled labor from SA, the country continues to face a shortage of skilled labor, particularly at the professional and managerial levels. South Africa's reputation has also suffered due to its proximity to the tangle of conflicts that have engulfed its northern neighbors. During 2001, especially during the fourth quarter, the South African economic outlook suffered from the steep and rapid decline in the exchange value of the Rand. From the September to the end of December 2001, the weighted nominal effective exchange rate of the Rand depreciated by 24 percent. In the first half of 2002, however, the Rand regained over 20 percent of its value against the dollar and was the world's best performing currency during this period.

5. During the past few years, investment has been spurred by a number of steps designed to make South Africa's markets more attractive to foreign investment. These include: reducing import tariffs, eliminating the discriminatory non-resident shareholders tax, eliminating most foreign exchange controls, halving the secondary tax on corporate dividends, lowering the corporate tax rate on earnings to 30 percent, and allowing foreign investors 100 percent ownership. Additionally, the government does not impose performance requirements on foreign companies and does not require new investments to comply with specific criteria (although the government encourages investments that strengthen, expand, or enhance technology in the various industries). At the same time, South Africa's tariff system is complex and is subject to rapid change. Foreign companies have also complained about delays or rejections in requested work permits for some of their proposed expatriate employees.

6. The South African Government treats foreign investment essentially the same as domestic investment. Foreign firms are eligible for various national investment incentives such as export incentive programs, tax allowances, and other trade regulations.

7. In contrast to domestic investors, however, foreign investors face local borrowing restrictions imposed by exchange control authorities. Such restrictions apply to

‘affected persons’ - companies or other bodies in which (1) 75 percent or more of the capital assets or earnings may be used for payment to, or for the benefit of, a non-resident, or (2) 75 percent or more of the voting securities, voting power, power of control, capital, assets or earnings are vested in, or controlled by, any non-resident. No person in SA may provide credit to a non-resident or “affected person" without exchange control exemption. However, non-residents and “affected persons" may borrow up to 100 percent of the South African Rand value of funds introduced from abroad and invested locally. Additionally, the ability to borrow locally increases if both residents and non-residents own the local enterprise.

8. The SAG recognizes the importance of restructuring and privatizing State-Owned Enterprises (SOE). During President Mandela's term, the Airports Company of South Africa (ACSA), South African Airways (SAA), and Telkom (communications) were all partially successfully privatized. In November 1999, President Mbeki announced a program to accelerate privatization of the "big four" parastatals: Eskom (power generation and distribution), Denel (defense), Transnet (transportation), and the remaining 70 percent of Telkom. Cumulatively, these parastatals are valued at over $25 billion, and represent 90 percent of SAG assets. Although the government expected significant assets to be sold during the three years following 1999, its privatization program has slowed from its earlier pace. During 2001, the proceeds from privatization amounted to R7.5 billion ($1 billion) through the sale of government held shares in the private company “MCell” and the privatization of SASRIA (SA Special Risks Association Limited).

9. In May 2002, however, the SAG re-emphasized its determination to push ahead with its privatization program in the fiscal year, including its benchmark listing of telecommunications utility Telkom, the concessioning of port operations in Durban, as well as moves in other industries such as rail operations and electricity. In June 2002, the SAG announced the formation of Turbomeca-Africa, a new high tech engineering company specializing in manufacture, repair, maintenance, and overhaul of a range of military and civil helicopter engines and components. This company is a partnership drawn from a 49 percent contribution of assets from Denel Airmotive and 51 percent from Turbomeca in France. At the same time, the Cabinet

also approved the acquisition by BAE Systems of 30 percent of Denel Aerospace and Ordnance for R375 million. With the Turbomeca and BAE Systems agreements, the restructuring of the state-owned company, Denel, has reached a major milestone. Also during June, the SAG announced the appointment of a Board to fast track the privatization of Aventura (state-owned holiday resorts).

A.2. Conversion and Transfer Policies

10. Exchange controls have effectively been abolished in relation to non-residents, and the Government is pursuing a policy of gradually relaxing the remaining exchange controls applicable to residents. Exchange control was introduced in order to stem the outflow of capital from South Africa, and to ensure a measure of stability in currency markets. It is not difficult to obtain foreign exchange.

11. The Statutory Authority for exchange control is the Currency and Exchange Act, 1933 (No. 9 of 1933). The exchange control regulations (as amended) came into force in 1961. The administration of exchange control has been delegated to the South African Reserve Bank (SARB), which in turn has delegated certain of its powers to banking institutions.

12. Generally, there are no restrictions on inward or outward transfer of funds of which non-residents are the beneficial owners. For exchange control purposes, non-residents are persons not resident in South Africa and non-South African companies, excluding external companies registered in South Africa. Capital invested in South Africa can be freely returned abroad, as can capital and revenue profits, for example, dividends and branch profits. There is generally no limit on the remittance of commissions, director's fees, technical service payment, management fees, or the purchase of technology, although certain restrictions may apply when these payments are made within group companies. Where management fees are paid to a non-resident group company, invoices based on time spent will be required. Non-residents are permitted to maintain foreign currency accounts with South African banks. If a South African company is 100 percent owned by non-residents, there are certain requirements that need to be satisfied before a non-resident can transfer profits abroad. In the case where the ownership is having a South African partner,

the non-resident can transfer profits without any restrictions.

13. The Reserve Bank of South Africa, assisted by authorized dealers in foreign exchange, administers the remaining exchange control restrictions. Restrictions still exist with regard to local borrowing by foreign-held companies, but these are not significant and are intended merely to ensure that local borrowings are not exploited so as to permit large-scale remittances of profits on minimal capital investments. If a non-resident grants a loan to a South African resident, the South African debtor is required to obtain approval for the amount and the interest rate, to ensure that, the interest is freely remittable.

14. Royalties, license fees, and certain other remittances to non-residents require the approval of the SARB. The Department of Trade and Industry must approve manufacturing royalties. Royalty fees are based on a percentage of ex-factory sales with a maximum of 4 percent for consumer goods and 6 percent for intermediate and final capital goods.

15. Further questions on exchange control can be addressed to:

South African Reserve Bank
Exchange Control Division
P.O. Box 427
Pretoria 0001
Tel: (27)(12) 313-3911
Fax: (27)(12) 313-3785
Internet: www.resbank.co.za

A.3. Expropriation and Compensation

16. There is no record of any expropriation or nationalization of American investment in South Africa since 1924. Under the Expropriation Act of 1975 and the Expropriation Act Amendment of 1992, the State is entitled to expropriate property for public necessity or public utility. The decision to expropriate is an administrative one vested in the State. Compensation is determined by the amount the property would have been realized in an open market transaction by a willing seller to a willing buyer. Representatives of private sector companies in the mining

sector are concerned, however, about how a proposed new mining law would affect their property interests in the mines.

A.4. Dispute Settlement

17. South Africa is a member of the New York Convention of 1958 on the recognition and enforcement of foreign arbitration awards, but is not a member of the International Center for the Settlement of Investment Disputes. South Africa has an objective system for enforcing property and contractual rights. The government does not interfere in the court system. South Africa has written commercial and bankruptcy laws, which are consistently applied.

A.5. Performance Requirements and Incentives

18. The South African Department of Trade and Industry (DTI) has developed a number of incentive schemes and continues to introduce new ones. These incentive measures are available for a wide range of sectors and can be classified under four broad categories that are aligned with the process of development that each business goes through including:

- Innovation - (Research & Development.)
- Enterprise/Manufacture - (Establishment/expansion of a manufacturing concern.)
- Competitiveness - (Improving the efficiencies of an existing operation.)
- Export - (The exportation and marketing of manufactured goods.)

19. Two new incentive schemes have recently been introduced. The Strategic Investment Programme (SIP) is an investment incentive in the form of an additional investment allowance, which may be used to offset taxable income. The allowance is a deduction against taxable income, which can be carried forward indefinitely and which can be used to offset taxable income from the strategic investment itself or from other pre-existing industrial projects carried on by the same company. The Foreign Investment Grant (FIG) is a cash grant to assist foreign investors with the cost of relocating new machinery and equipment from overseas to

South Africa. New machinery and equipment qualify for the assistance. The scheme is available to foreign investors with a shareholding of at least 50 percent. Further information may be obtained from the DTI website, www.dti.gov.za

20. In addition, the state-owned Industrial Development Corporation (IDC) provides loan financing to the private sector for the development of viable secondary manufacturing in its target sectors. The IDC is often prepared to make an equity investment or enter into joint ventures with foreign investors. There are several government-supported bodies that provide technical assistance for new industries. These include the Council for Scientific and Industrial Research (CSIR), a multi-disciplinary research, development, and implementation organization; Technifin, a government-owned firm financing the commercialization of new technology and products; and the Council for Mineral Technology, Metallurgy Research and Development (Mintek).

21. The SAG utilizes its position of both buyer and seller to promote the economic empowerment of historically disadvantaged groups through the Black Economic Empowerment (BEE) program. Governmental interest in promoting the interests of historically disadvantaged groups has, however, differed across ministries. In large-scale infrastructure projects, like the Maputo Corridor, BEE objectives were evident in requirements mandating the use of small and medium sub-contractors. In other cases, like the tender for the third cellular license, having a BEE plan and partner was mandatory.

22. In September 1996, DTI introduced an Industrial Participation (IP) program. The goal of this program is to fast-track investment, exports, and technology development by using government procurement to leverage such initiatives. The program is designed to encourage foreign suppliers of major government contracts to seriously evaluate the SA market as a possible investment or business location. Under the program, all government and parastatal purchases or lease contracts (goods, equipment or services) with an imported content equal to or exceeding US$10 million (or the equivalent thereof) are subject to an IP obligation. This obligation requires the seller/supplier to engage in commercial or industrial activity equaling or exceeding 30 percent of the imported content of total goods

purchased under government tender. The seller/supplier submits and implements business projects, generating IP credits in an amount that equals or exceeds the IP obligation. Excess credits may be "banked" for a period of four years after the obligation is discharged, however, only 50 percent of a new obligation can be fulfilled by banked credits. The Industrial Participation obligation must be fulfilled within seven years of the effective date of the IP agreement.

A.6. Right to Private Ownership and Establishment

23. Private property rights are strongly protected by South African law. In general, all foreign and domestic private entities are entitled to own business enterprises and engage in profit-making activities. Private entities are allowed freely to establish, acquire, and dispose of interests in business enterprises. The acquisition of an existing business enterprise is usually achieved through the purchase of shares or assets. The securities regulation code applies to public limited companies and to private companies with 10 or more shareholders, and capital and reserves in excess of 5 million Rand (US$500,000). If a stake of 30 percent or more is acquired, an offer must be made to minority shareholders to acquire all their shares at a price equal to the highest paid by the investor.

A.7. Protection of Property Rights

24. Property rights, including intellectual property (IPR), are protected under a variety of laws and regulations. South Africa has an independent judiciary under which any threat to property rights may be enforced without political interference. There are deficiencies, however, in guaranteeing the protections afforded under these laws.

25. SA is a member of the Paris Union and acceded to the Stockholm text of the Paris Convention for the protection of intellectual property. SA is also a member of the World Intellectual Property Organization (WIPO). The new government passed two IPR-related laws in Parliament at the end of 1997 - the Counterfeit Goods Act and the Intellectual Property Laws Amendment Acts - thereby enhancing its IPR protection. The Department of Trade and Industry (DTI) administers these acts.

26. All agreements relating to payment for the right to use know-how, patents, trademarks, copyrights or other similar property are subject to approval by the exchange control authorities. A distinction is made between consumer goods and capital goods. For consumer goods, a royalty of up to 4 percent of factory selling price is regarded as acceptable. For intermediate and finished capital goods, a royalty of up to 6 percent will generally be approved.

27. Owners of patents and trademarks may license them, but when this entails the payment of royalties to a non-resident licensor, the royalty agreement must be approved by the DTI. Patents are granted for 20 years - usually with no option to renew. Trademarks (including service marks) are valid for an initial period of 10 years and are renewable indefinitely for further 10 years period. The holder of a patent or trademark must pay an annual fee to preserve its validity.

28. Literary, musical and artistic works, cinematographic films, and sound recordings are eligible for copyright under the Copyright Act of 1978. New designs may be registered under the Designs Act of 1967, which grants copyrights for five years. South Africa is a signatory to the Berne Copyright Convention.

29. While South African IPR laws and regulations are largely TRIPS-compliant, there is continuing concern about copyright piracy and trademark counterfeiting in general as a result of the ineffective enforcement of the IPR legislation. In relation to the Counterfeit Goods Act, South Africa has during 2001 introduced measures to enhance enforcement. More inspectors were appointed, warehouses for counterfeit goods designated, counterfeit goods destroyed, and the training of Customs, Border Police and South African Police Services officials were improved. Nevertheless, the U.S. copyright industry estimates that trade losses due to the piracy of copyrighted works are still large. Although law enforcement authorities often cooperate with the private sector in investigating allegations of counterfeit trade, there have been concerns about laxity in enforcement of IPR laws against imports of pirated goods.

A.8. Transparency of the Regulatory System

COMPANY LAW

30. In general, SA's Companies Act (1973) provides for clear, transparent regulations concerning the establishment and operation of businesses. Business organizations of more than 20 persons that operate for gain must be registered as a company under the Act. Foreign investments are organized under the same rules and regulations as domestic firms, with one exception: foreign companies that choose not to form a firm in SA operate as "external companies." Regardless, the legal liabilities of an external company are not limited.

31. No government approval is required for foreign investors to establish a new business in South Africa apart from the approval required under the exchange control regulations. The investor will be required to appoint a consultant/auditor/legal advisor to register a company on his/her behalf. The company should be registered within 21days; it should also register with the tax authority.

32. In South Africa there are no locations where a foreign-owned business is prohibited or investment is officially discouraged. The forms, which are to be filled by an investor, are simple and understandable. The whole process from beginning to end on average may take six months, but if done through Trade and Investment South Africa it can be finalized within one month. Trade and Investment South Africa is a one-stop shop to help investors with issues relating to exports and investment.

33. South Africa actively encourages direct and indirect investment by non-resident persons and companies. Virtually all business activities are open to foreign investors and there are generally no restrictions on foreign investment. Restrictions would usually relate to a particular industry and be applicable both to residents and non-residents. Very few restrictions apply only to foreign companies. For example, a foreign bank establishing a branch in SA may be required to employ a certain minimum number of local residents in order to obtain a banking license and may be obliged to have a minimum capital base. Restrictions also exist regarding the ownership of immovable property by foreign companies. Foreign companies are required to register as external companies before immovable property may be registered in their names.

34. The most common form of business entity in SA is the limited liability company having a share capital. These

companies may be either public or private companies. Public companies must have at least seven members, except in those circumstances where a public company is a wholly owned subsidiary of another public company, in which event a single shareholder is permitted. There are no restrictions on the maximum number of members. It must have at least two directors. A public company may apply for a listing on the JSE Securities Exchange SA provided that it complies with the JSE listing requirements. Private companies must, by their articles of association, restrict the right to transfer their shares, limit the number of their members in most instances to no more than fifty, and prohibit any offer to the public for the subscription of their shares or debentures. The minimum number of directors and shareholders in a private company is one.

35. Other typical business entities are:

Branches: A foreign company may also operate through a branch in SA. A company incorporated outside SA that establishes a place of business in SA is classified as an “external company” and its South African business is colloquially known as a “branch”. The foreign company is obliged to register with the Register of Companies and must comply with the provisions of the Company Act. If a foreign company wishes to establish a branch in SA, registration is accomplished in much the same way as for a domestic company, and a branch is in most respects subject to the same regulations as a South African company.

Close Corporations: A close corporation is a suitable, and popular, form of structuring small business for investors who are individuals. They provide limited liability without the administrative burden of companies and an audit is not required.

Partnerships: The Companies Act limits the membership in a business partnership to twenty persons except for partnerships in certain recognised professions. A partnership is not subject to the specific legislative requirements applicable to companies and close corporation.

Trusts: A trading trust is a form of unincorporated business organisation created by an agreement under which property is held and managed by trustees for the benefit and profit of beneficiaries designated in the agreement. Trading trusts are not widely used in SA, but could be a useful hybrid entity in cross border structuring of investment. A trust could also be a convenient and effective means for holding passive investments into South Africa.

36. All businesses must obtain a business license from the local authority, which is valid indefinitely unless the business is relocated or acquired by a new owner. In general, businesses must register with the local Regional Services Council, Department of Labor, Workman's Compensation Commissioner, the appropriate Industrial Council, the South African Revenue Service, and the Department of Customs and Excise.

IMMIGRATION LAW

37. Several U.S. and other foreign companies have complained that South Africa's immigration legislation and the application of the law make it extremely difficult to get work permits for their foreign employees. They argue that the lack of legislation has affected the recruitment of much-needed foreign labor as South Africa still relied on the apartheid-era Aliens Control Act that did not take into account recent international developments and the opening up of the South African market. The SAG accepted that this is a problem and introduced an Immigration Bill that would create more categories of permits for temporary residence in June 2001. The Immigration Bill, more than four years in the making, was finally approved by Parliament in May 2002 after being subjected to many amendments during 2001. The Act requires employers of foreigners to pay a percentage of wages as a fee to the government.

TAX LAWS

38. The rate of South African Normal Company Taxation applicable to Companies (other than small business corporations and "employment companies" with financial years ending after 1 April 1999) is 30 percent. Prior to April 1999, the company tax was 35 percent and prior to April 1994, the company tax rate was 40 percent. Companies are not entitled to any rebates except for foreign royalty and foreign taxes paid. Companies are also liable for Secondary Tax on companies (STC) at 12.5 percent in respect of all dividends declared after 13 March 1996. Close Corporations are treated as companies for taxation purposes.

39. Commencing January 2001, South Africa moved to a residence-based income tax system. Taxes are levied on residents of SA irrespective of where in the world the income is earned. Although taxpayers are taxed on their worldwide income, some categories of income and activities undertaken outside SA are exempt from SA tax. External companies are taxed at a flat rate of 35 percent on their South African source profits. Effective October 1, 2001, SA also instituted a capital gains tax. Individuals include 25 percent of net capital gains in taxable income, and companies include 50 percent of capital gains in taxable income. As a result, the effective capital gains rate for individuals will vary from 0 to 10.5 percent and the rate for companies is 15 percent. SA also has a 14 percent value-added tax (VAT). Exports are zero-rated and no VAT is payable on imported capital goods.

COMPETITION LEGISLATION

40. The Competition Act of 1998, which came into effect in September 1999, is aimed at eliminating anti-competitive practices, ending abuse of dominant positions (defined as a market share of 35 percent or more), and strengthening merger control. The legislation also gave more power to restrict anti-competitive behavior of the state-owned enterprises, especially when they compete unfairly with the private sector. The Act replaced the previous legislation and allows for the creation of a much stronger competition authority, the Competition Commission. Its functions range from investigating anti-competitive conduct; assessing the impact of mergers and acquisitions on competition (and the possible socio-economic impact) and taking appropriate action; monitoring competition levels and market transparency in the economy; identifying impediments to competition; and playing an advocacy role in addressing these impediments. The Competition Commission is independent, but its decisions may be appealed before the Competition Tribunal and the Competition Appeals Court.

TELECOMMUNICATIONS LAWS AND REGULATIONS

41. In the WTO, South Africa made a series of value-added telecommunication commitments and, for basic telecommunications services, adopted the WTO reference paper on pro-competitive regulatory principles. However during 2001, South Africa passed amendments to the telecommunication Act of 1997 that are the subject of

considerable controversy and concern to industry. For example, it allows only Telkom and the Second Network Operator (SNO) to provide Voice Over Internet Protocol (VOIP) services. This legislation also appears to expand the definition of a Public Switched Telecommunications Service (PSTS) to include the provision, repair, and maintenance of any other telecommunication apparatus. This definition may face legal challenges from the VANS as it may eliminate their ability to provide Customer Premise Equipment. Interested parties continue to raise questions concerning the consistency of these and other provisions of the amended Telecommunications Act with South Africa’s WTO obligations.

42. The South African Government also committed itself to license a second fixed line provider to compete against the state-owned monopoly supplier, Telkom, in long-distance, data, telex, fax, and private leased circuits services, no later than January 1, 2004. After several policy changes in 2001/02, South Africa ultimately announced that it would license a second network operator (SNO) to compete with Telkom when its exclusivity period ended at the end of May 2002. Delays in the tendering process are, however, likely to postpone the licensing of a SNO until late in 2002. Equity interest from outside investors in the SNO will be limited to 51 percent. Nineteen percent will be reserved for Black Economic Empowerment groups (BEE) and the remaining 30 percent will be allocated to the telecommunications divisions of Eskom (the state energy utility) and Transnet (the transport parastatal), which already have some infrastructure in place.

43. Internet Service Providers (ISP) and Value-Added Network Services (VANS) have in the past faced numerous problems with Telkom. Telkom had refused to provide new facilities to VANS operators as it claimed that VANS and ISPs are resellers of basic services and thus were infringing on its statutory monopoly. Although South Africa's telecommunications regulatory authority (ICASA), not Telkom, has sole authority to determine whether these services are illegal, ICASA has not effectively asserted its authority over Telkom. Decisions taken by ICASA have often been challenged by Telkom, which delays the implementation of ICASA's rulings. The situation is expected to improve, with Telkom's monopoly ended, since now both the Competition Commission and ICASA will have jurisdiction over the telecommunications sector.

44. South Africa is preparing to pass the "E-Commerce" Bill, designed to encourage use of the Internet in business transactions. However, the controversial bill will have a questionable impact on the .za domain name, Internet retailing, encryption providers, unsolicited e-mail, and government access to private databases. Among other things, the bill would give the government sole control of the .za domain name in contrast to international norms, and would require retailers to provide a mandatory seven-day return policy for all products, including music and software.

A.9. Efficient Capital Markets and Portfolio Investments

45. South Africa's banking system is comprised of three elements:

- The South African Reserve Bank (www.resbank.co.za);
- Private sector banks; and,
- Mutual Banks (Banks without ordinary shareholders, owned instead by all shareholders or depositors; only two of these banks still exist in South Africa.)

46. Oversight of South Africa's banks is the purview of the South African Reserve Bank, while South Africa's sophisticated non-bank financial services industry is governed by the Financial Services Board (FSB). The FSB regulates insurance, pension funds, unit trusts (i.e., mutual funds), participation bond schemes, portfolio management, and the financial markets. The financial markets consist of:

- The JSE Securities Exchange SA (www.jse.co.za)
- The Bond Exchange of South Africa (www.bondex.co.za)

47. The Bank Act of 1990 regulates private banks. A variety of credit instruments are available to the private sector, including bankers' acceptances, fixed and variable rate securities, bonds, and equities. In May 1995, amendments to the Banks Act permitted foreign banks to conduct banking operations via branches, ending the earlier requirement that they establish subsidiaries. On November 1, 1995, the JSE began permitting foreign banks and firms to join its registry. A complete list of the registered banks, banking associations, development banks, and related organizations that maintain a presence in South Africa is

available on an ABSA-sponsored website at www.finforum.co.za/fininsts/bankdir.htm.

48. The South African Reserve Bank is nearing completion of meeting all recommendations of the Basel Committee on Banking Supervision. The Financial Services Board continues to assess and implement the recommendations of the International Organization of Securities Commissions in order to bring the non-banking financial services in line with international best practices. There are presently discussions underway to establish a single financial services regulator under either the Reserve Bank or the Financial Services Board.

49. At year-end 2001, there were a total of 635 firms listed on the JSE Securities Exchange SA (JSE) with a total market capitalization value of R1,771 billion (US$205 billion). This represents a 23 percent Rand increase. However, in dollar terms there is a slight decrease from the 2000 market capitalization of US$206 billion. Overall, the JSE is ranked number 18 in terms of total market capitalization. Since July 2001, the South African Futures Exchange (SAFEX) has been incorporated within the JSE allowing purchase of equities and derivatives from the same exchange. The JSE is the only African exchange that offers commodities and futures trading. In 2001, the JSE also completed its transition to the electronic clearing and settlement system called STRATE (Share Transactions Totally Electronic). Elimination of paper copies allows the JSE to settle trades within five days. In May 2002, the JSE shifted to a new trading system, the Stock Exchange Electronic Trading Service (Sets), which is the system developed and used by the London Stock Exchange. The new trading system permits South African companies to list on the London Stock Exchange without changing domicile.

50. The Bond Exchange of South Africa (BESA) regulates the fixed-interest securities market and is licensed under the Financial Markets Control Act. Membership includes banks, insurers, investors, stockbrokers, and independent intermediaries. The bond exchange consists principally of government bonds with some bonds from government parastatals also available. However, there is a growing corporate bond sector as more companies seek to raise capital through this mechanism.

A.10. Political Violence

----

51. Political violence has largely disappeared as a major issue in South Africa. The occurrence of criminal violence is relatively high, however, and can be expected to persist throughout the country's period of transition to social stability. National and provincial governments have unveiled a number of programs aimed at attacking crime in general, and South Africa is working closely with donor countries to address this problem.

A.11. Corruption
----

52. South African law provides for prosecution of government officials who solicit or accept bribes. Penalties for offering or accepting a bribe may include criminal prosecution, monetary fines, and dismissal for government employees, or deportation for foreign citizens. South Africa boasts no fewer than 10 agencies engaged in anti-corruption activities. Some, like the Public Service Commission (PSC), Office of the Public Protector (OPP), and Office of the Auditor-General (OAG), are constitutionally mandated and address corruption as only part of their responsibilities. Others like the South African Police Anti-Corruption Unit, and the Directorate for Special Operations – more popularly known as the Scorpions – are dedicated to combating crime and corruption.

53. High rates of violent crime make it difficult for South African criminal and judicial entities to dedicate adequate resources to anti-corruption efforts. U.S. firms have, however, not identified corruption as a serious obstacle to foreign direct investment. During the last few years, violent crime has been a more serious problem and an impediment to and a cost of doing business in South Africa. Although there were some positive changes in the last part of 2001, the South African Police forces generally have not been effective or well accepted in many communities because of their historical role in enforcing minority rule, lack of training, and internal crime and corruption within the forces. Industries dependent on IPR protection believe corruption is one of the chief causes of the importation of pirated goods.

54. Government transparency has increased substantially during the last few years. The Promotion of Access to

Information Act, signed into law in February 2000, enhanced it. The Public Finance Management Act (PFMA), which became effective on April 1, 2000, helped raise the level of oversight and control over public monies and also helped improve the transparency of government spending, especially with regard to off-budget agencies and parastatals.

55. The regulations in terms of the Preferential Procurement Policy Framework Act, announced in 2001, should increase transparency in government procurement by, inter alia, establishing clear rules for preferential awarding of government contracts to firms with black ownership or shareholders.

A.12. Bilateral Investment Agreements

56. South Africa has been a member of the Southern African Customs Union (SACU) since its inception in 1910. In addition to SA, the member countries are Botswana, Swaziland, Lesotho, and Namibia. SACU aims to promote free trade and cooperation on customs matters among its five member states. There are presently no internal tariff barriers between SACU member states, although different tax regimes result in the need for tax adjustments at the borders. All SACU members, except Botswana, share a common currency as members of the Common Monetary Area. The restructuring of the SACU formula, to give effect to principles agreed by the SACU Ministers of Finance in September 2000, is expected to take effect in 2003/2004. The new agreement will contribute to stabilizing the distribution of the customs and excise pool and will see the introduction of a development fund targeted to support the less developed members of the Union.

57. South Africa became a member of the Southern African Development Community (SADC) in 1994. SADC is a sub-regional organization created in 1992 that seeks to foster economic growth and development through increased economic integration among its 14 member states. The SADC Trade Protocol is the cornerstone of SADC's sub-regional trade integration effort and under it, a Free Trade Agreement (FTA) went into effect during 2000. Some details of the FTA are, however, still being negotiated and the elimination of tariffs will not be complete until 2012. South Africa is playing a leading role in promoting tax cooperation within the SADC, including capacity building

initiatives, developing a tax database for the region, formulating common approach to tax incentives, administrative coordination, and eliminating harmful tax practices. Memoranda of Understanding on Cooperation in Taxation and Related matters and on Macroeconomic Convergence within SADC are also being considered.

58. South Africa has signed various investment agreements since 1994. A complete list of the countries with which such agreements have been made is available on the SAG website at www.gov.za/yearbook/foreign.htm.

59. In February 1999, the U.S. and SA signed a Trade and Investment Framework Agreement (TIFA). This was the first TIFA the U.S. signed in Sub-Saharan Africa, indicating South Africa's importance as the leading African economic power. The TIFA established a Council on Trade and Investment that is composed of representatives of both governments and also consults with the private sectors of both countries. The council meets regularly to discuss specific trade and investment matters, and to negotiate agreements to remove impediments to trade and investment. The last meeting was held in February 2002. Following the visit in February 2002 of U. S. Trade Representative Robert Zoellick to South Africa, the United States and the Southern African Customs Union are exploring the feasibility of entering an FTA.

60. The U.S.-SA bilateral tax treaty, eliminating double-taxation of business officials from one country working in another was signed in February 1997 and became effective January 1, 1998. Agreements Regarding Mutual Assistance between the Customs Administrations of the US and South Africa came into force on August 1, 2001.

61. A Trade, Development, and Cooperation Agreement containing a Free Trade Agreement (FTA) went into force between South Africa and the European Union on January 1, 2000. Under the FTA, the EU is committed to the full liberalization of 95 percent of South African imports over a 10-year transitional period, while SA is to liberalize 86 percent of EU imports over a 12-year transitional period.

A.13. OPIC and Other Investment Insurance Programs

62. The Overseas Private Investment Corporation (OPIC) supports, finances, and insures U.S. overseas investment projects that are financially sound. Its assistance contributes significantly to the social and economic development of the host country. OPIC aids U.S. investors through the following four principal activities, which are designed to promote overseas investment and reduce the associated risks:

- Financing businesses through loans and loan guarantees.
- Supporting private investment funds.
- Insuring investment against a broad range of political risks.
- Engaging in outreach activities designed to inform the American business community.

63. South Africa signed a bilateral investment incentive agreement with the United States in November 1993 with respect to all of OPIC's programs. Today, OPIC backs a number of investment funds focused on Sub-Saharan Africa including the Africa Growth Fund (US$ 25 million), the Modern Africa Growth and Investment Fund (US$ 105 million), and the ZM Investment Fund (US$ 120 million). OPIC is presently establishing the US$ 350 million Sub-Saharan Africa Infrastructure Fund (SAIF) to target infrastructure projects in all of Sub-Saharan Africa, including South Africa. Additional information is available at www.opic.gov.

64. During March 2002 Assistant Secretary Kansteiner, accompanied by the President of OPIC led a delegation of fund mangers to South Africa. Over one hundred project proposals, requiring equity funds, were reviewed of which 23 projects were presented to the fund managers in person. This visit had good press coverage and highlighted the potential of AGOA to attract foreign investment.

65. South Africa is also a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA).

A.14. Labor

66. Since 1994, the South African Government has been systematically removing the vestiges of the apartheid labor system. The government is attempting to erect in its place

a labor market system that is characterized by employment security, reasonable wages, and decent working conditions. The new system, which was negotiated between government, business, and organized labor under the aegis of the National Economic Development and Labor Council (NEDLAC), places a high value on worker rights and collective bargaining between parties that are equally empowered.

67. The new labor dispensation rests on four legislative pillars:

-- The Labor Relations Act, in effect since November 1996 is the cornerstone of the entire regulatory structure. It enshrines both the right of workers to strike and also the right of management to lock out workers and hire replacement labor during a strike. The Act created the Commission on Conciliation, Mediation, and Arbitration (CCMA). The Commission currently has a caseload far in excess of that which was originally projected because of the ease of access to its services.

-- The Basic Conditions Employment Act, implemented in December 1998, establishes a 45-hour workweek and minimum standards for overtime pay, annual leave, notice of termination, and the like.

-- The Employment Equity Act prohibits unfair employment discrimination and requires large and medium employers to prepare affirmative action plans to ensure that blacks, women, and disabled persons are adequately represented in the workforce.

-- The Skills Development Act imposes a levy on employers equal to 1.0 percent of payroll to be used for training programs devised by industry-specific training authorities and jointly administered by employer organizations and labor.

68. Many in business claim that the South African labor market is over-regulated and have urged the government to scale back some of the recently passed legislation. In response, the Labor Minister proposed a number of amendments to the labor laws, which were later refined and agreed upon in an informal business-labor body known as the Millennium Labor Council (MLC). These amendments were passed by Parliament in March 2002.

69. According to the latest (September 2001) Labor Force Survey, published by Statistics SA, the official unemployment rate is 29.5 percent. This rate uses the International Labor Organization (ILO) definition of unemployed, which excludes persons who have not looked for work in the four weeks prior to the interview. If the aforementioned people are included, the “expanded unemployment rate” is more than 40 percent. Education and skills training are not keeping pace with the rapid increase in demand for skilled workers. Official unemployment rates by race are reported as:

-- Africans	35.9 percent
-- Colored	21.8 percent
-- Indians	18.4 percent
-- Whites	6.0 percent

70. There are about 3.3 million union members in South Africa, composing 21 percent of the economically active population. Most union members belong to affiliates of one of the three major union federations: the Congress of South African Trade Unions (COSATU), the Federation of Unions of South Africa (FEDUSA), or the National Council of Trade Unions (NACTU). Although COSATU, the largest federation with some 1.8 million members, is formally allied with the ruling African National Congress (ANC) and the South African Communist Party (SACP), it often opposes the government on matters of economic policy. One of COSATU’s particular targets is governmental efforts to privatize municipal services and state-owned corporations. Striking is protected under South African law, but, in general, labor militancy has been declining since 1994.

A.15. Foreign Trade Zones/Free Ports

71. The Industrial Development Zone (IDZ) Program, announced in September 2000, is another incentive offered by the South African Department of Trade and Industry to encourage international competitiveness of the South African based manufacturing sector. IDZs will be purpose-built industrial estates linked to an international port or airport in which quality infrastructure and expedited customs procedures are coupled with the unique duty-free operating environments suited to export-oriented production. Government will license operators to develop and run the IDZs, provide enterprise support measures, minimize "red tape," and provide efficient services to enterprises within

an IDZ. During the past year, the Coega Industrial Development Zone (area near Port Elizabeth) has been proclaimed, the operator appointed, and construction is to begin at the end of July 2002. In the beginning of 2002, Cabinet has also approved Industrial Development Zones in East London and Richards Bay.

A.16. Foreign Direct Investment Statistics

72. Foreign direct investment (FDI) data is readily available in South Africa, but published statistics vary depending on their source and definition. Among the numerous institutions that provide foreign investment data, the U.S. Embassy in South Africa tends to rely mostly on the South African Reserve Bank (SARB). The SARB statistics conform to the IMF definition of FDI* and represent actual investment, excluding announced, but not completed, "intended" investment. However, the SARB does not provide country-specific figures which distinguish between actual new investment flows and changes in investment stocks caused by asset swaps, exchange rate adjustments, and mergers and acquisitions. This situation makes it difficult to track the U.S. and other countries' FDI position in SA on a yearly basis. Because SARB statistics only provide an annual total for all the countries' flows combined, the U.S. also relies on more updated information obtained from the South Africa-based firm “Business Map” (BM). The latter offers fee-based services for a wide range of investor-related data and analysis and may be contacted via its web site at www.bmap.co.za.

(*FDI is generally defined as ownership of at least ten percent of the voting rights in an organization by a foreign resident or several affiliated foreign residents, including equity capital, reinvested earnings, and long-term loan capital.)

73. The following FDI statistics were drawn from the SARB's March 2002 Quarterly Bulletin. The conversion exchange rate used was that of the average for each year cited.

AVERAGE EXCHANGE RATES USED

	1997	1998	1999	2000	2001
US$/Rand	4.61	5.53	6.11	6.93	8.60

YEAR-END STOCK OF FOREIGN DIRECT INVESTMENT IN SOUTH AFRICA

	1997	1998	1999	2000
Rand (billion)	81.46	91.86	318.60	328.86
US$ (billion)	17.67	16.61	52.15	38.3

YEAR-END STOCK OF SOUTH AFRICAN DIRECT INVESTMENT ABROAD

	1997	1998	1999	2000
Rand (billion)	113.2	170.0	203.0	244.7
US$ (billion)	29.0	30.74	29.30	28.5

GROSS DOMESTIC PRODUCT (IN RAND BILLION AT CURRENT PRICES)
AND FOREIGN DIRECT INVESTMENT AS A PERCENTAGE OF GDP

	1997	1998	1999	2000	2001
GDP	685.7	739.5	802.8	887.8	975.2
FDI (percent)	12.0	12.5	39.7	37.0	N.A.

YEAR-END STOCK OF FDI IN SOUTH AFRICA BY REGION/COUNTRY
(IN BILLIONS)

REGION/COUNTRY	RAND		US$	
	1999	2000	1999	2000
EUROPE - Total	288.0	292.6	47.1	42.2
-- UNITED KINGDOM	248.3	242.9	40.6	35.1
-- GERMANY	16.8	19.1	2.8	2.8
-- SWITZERLAND	8.4	10.3	1.4	1.5
-- NETHERLANDS	5.4	11.0	0.9	1.6
-- FRANCE	2.1	2.5	0.4	0.4
-- ITALY	1.6	1.5	0.3	0.2
N&S AMERICA – Total	19.1	22.8	3.1	3.3
-- USA	17.3	19.6	2.8	2.8
AFRICA - Total	1.8	2.3	0.3	0.3
ASIA - Total	8.75	10.2	1.4	1.5
-- MALAYSIA	6.6	6.8	1.1	1.0

-- JAPAN	0.9	1.5	0.1	0.2
OCEANIA - Total	0.9	0.5	0.2	0.1
INT'L ORG – Total	0.1	0.4	0.02	0.1
TOTAL	318.6	328.8	52.15	47.5

YEAR-END STOCK OF SOUTH AFRICAN DIRECT INVESTMENT ABROAD BY REGION/COUNTRY

REGION/COUNTRY	RAND		US$	
	1999	2000	1999	2000
EUROPE – Total	176.6	208.9	28.9	30.1
-- UNITED KINGDOM	78.6	77.3	12.9	11.2
-- LUXEMBURG	42.1	58.3	6.9	8.4
-- SWITZERLAND	22.1	48.7	3.6	7.0
- OTHER	33.8	24.6	4.0	3.5
N&S AMERICA - Total	10.9	16.5	1.8	2.4
-- USA	6.5	11.2	1.1	1.6
AFRICA – Total	10.0	12.3	1.6	1.8
ASIA - Total	1.3	1.7	0.2	0.2
OCEANIA – Total	4.2	5.2	0.7	0.8
TOTAL	203.0	244.6	33.3	35.3

YEAR-END STOCK OF FDI IN SOUTH AFRICA BY INDUSTRY SECTOR (BILLIONS)

INDUSTRY	RAND		US$	
	1999	2000	1999	2000
Agriculture, Forestry,& Fishing	0.4	0.5	0.1	0.1
Mining	114.1	91.5	18.7	13.2
Manufacturing	79.5	86.8	13.0	12.5

Construction	0.5	0.3	0.1	0.1
Trade, Catering, & Accommodation	10.6	11.9	1.7	1.7
Transport, Storage, & Communication	8.4	8.5	1.4	1.2
Finance, Insurance, Real Est.,& Business Services (*)	105.0	129.2	17.2	18.6
Social services	0.1	0.2	0.02	0.02
TOTAL	318.6	328.9	52.1	47.5

FDI FLOWS INTO SOUTH AFRICA IN RAND BILLIONS – CAPITAL MOVEMENTS 1995 TO 2001

1995	10.0
1996	7.2
1997*	19.5
1998	10.4
1999*	226.8
2000	13.6
2001	18.0

*The high inflow in 1997 was due to the 30 percent privatization of Telkom while the jump in 1999 is the result of three major South African companies moving their listings to the UK.

74. According to Business Map, the FDI into SA for 2001 was R18.013 billion, substantially better than the R13.6 billion of 2000. The quarterly average for 2001, at $528 million or R4.503 billion, is also better than the previous year’s figure in both dollar and rand terms. FDI into South Africa still depends on a few major transactions, with the automotive and steel industries leading investment during late 2001.

2001 (Quarter 4) - FDI Inflows by Sector
(Rand million)

Metal Products and Minerals Beneficiation	944
Construction, Building Materials, and Engineering	528
Motor and Components	2,285
Telecommunications and IT	40

Agriculture, forestry and fishing	570
Biotechnology	20
TOTAL	4,387

Source: BusinessMap*

*The Business Map definition of FDI includes mergers and acquisitions, new investments, privatization, expansions that result in new productivity capacity, and firm plans or intentions to invest, i.e., commitments.

75. The FDI in 2001 began strongly with Italy ranking as the top investing country for the period. This was due to the acquisition of Cirio by the Italian food group Del Monte Foods for R1.33 billion. Malaysia ranked second in foreign investment due to the R1.3 billion property development by the Malaysian Resources Corporation, Berhad Investment.

76. The U.S. continued its strong presence among the top investing countries, boosted by the R1.07 billion acquisition in the paper industry of Mondi’s assets by the Global Environment Fund to create Global Forest Products. U.S. automotive company Visteon also invested US$6 million in Port Elizabeth to manufacture fuel pumps for Ford. A disappointment, however, was U.S. electricity heavyweight Exelon’s decision early in 2002 to withdraw from its 12.5 percent stake in SA’s pebble bed project at the end of the feasibility stage. Its announced intention in November 2001 to buy 40 pebble bed modular reactors will no longer take place. Exelon, together with the UK’s British Nuclear Fuels, has played a vital role in raising the profile of the pebble bed in the U.S. and the UK at a time when nuclear power is coming back into fashion. The withdrawal is not only a blow for the scheme, and has unsettled the other partners, but also sends confusing signals to the U.S. Government and the players in the U.S. nuclear industry.

77. The biggest announced foreign investment was again in the motor and components sector. BMW Germany announced in December 2001 that it would invest R2.2 billion to upgrade BMW SA’s Rosslyn plant, an indication of the success of government’s motor industry development program. The upgraded plant is expected to produce up to 60,000 units a year, increasing the group’s export capacity to R50 billion a year.

78. The second biggest single investment was a UK investment in metal products and minerals beneficiation, with LNM's commitment in November to invest US$75 million in Iscor by March 2002. This follows LNM's announcement early that month that as part of its "business assistance agreement" with Iscor, it would acquire 10 percent of Iscor's shares on the open market. Subsequently, in January 2002, LNM exercised two share options to buy 10.6 percent of Iscor from Stimela. In April, it acquired another 8.8% of Iscor from the Industrial Development Corporation, boosting its stake in Iscor to 31 percent.

79. In the first investment of its kind in SA, the International Finance Corporation (IFC) channelled R20 million into the Biotech Venture Partners Fund, SA's first venture capital fund focused on the life sciences and biotechnology sector. Additional investment during 2001 included the Italian Company Mario Levi SRL investing in a R65 million tannery that manufactures leather vehicle seats; Credit Suisse First Boston bought a 45 percent stake in the brokerage AMB-DLJ; and the Scandinavian Building Systems acquired Corobrik during 2001.

FOREIGN COMPANIES INVESTED IN SOUTH AFRICA, BY COUNTRY

COUNTRY	NUMBER (*)
U.S.	636
Germany	467
UK	271
Belgium	150
Netherlands	136
France	135
Italy	69
Switzerland	61
Japan	58
Denmark	49

(* Includes subsidiaries and joint ventures, local partners, agents, franchises and representatives. Source - Business Map, 1998)

It is estimated that the number of US companies have grown from 636 to 900 since 1998.

80. The following companies have invested in excess of R1 billion in South Africa since 1994:

TOP FOREIGN COMPANIES INVESTED SOUTH AFRICA

Canada	- Placer Dome
Denmark	- AP Moller
France	- Lafarge
Germany	- BMW
Italy	- Del Monte Foods
Malaysia	- Petronas; Telecom Malaysia
Switzerland	- Swissair; Movenpick Hotels
UK	- Billiton; Lonrho Plc, SA Breweries
U.S.	- Caltex; Coca Cola; Dow Chemicals; IBM; SBC

81. Other significant U.S. investments include: Ford, McDonalds, Levi Strauss, Minute Maid, Nike, Salem, Silicon Graphics, SBC, Lucent Technologies, Microsoft, Compaq Computers, Dell, Sara Lee, Caterpillar, Goodyear, Eli Lilly and General Electric. Pepsi and Federal Mogul were the only two U.S. companies that left SA during 1994 to 1999. Many of these U.S. investors are multinational corporations. Unilever and Colgate-Palmolive remained in SA during the sanction period and have expanded to neighboring countries.